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B. Baltimore has requested that Mortgagee make available an additional term loan facility ("New Facility") in the maximum principal amount of U.S. \$4,200,000 for the purpose of (i) refinancing the Wendage parcel (as defined in the Credit Agreements) which property was purchased with funds from the Credit Facilities; (ii) acquiring certain additional parcels of real property in Rosemont, Cook County, Illinois, and (iii) paying certain pre-development costs associated therewith.

A. Baltimore and Mortgagee entered into a certain Loan Agreement, dated as of December 30, 1986, as amended ("Prior Loan Agreement"), a certain Letter Agreement, dated as of February 5, 1988, as amended ("Letter Agreement"), and two forms of application and agreement, as amended for standby letters of credit, as amended ("Application and Agreement"), which collectively made available to Baltimore certain credit facilities ("Credit Facilities") in the total principal amount of U.S. \$27,550,000. The Prior Loan Agreement, the Letter Agreement and the Application and Agreement are hereinafter collectively referred to as ("Credit Agreements").

R E C I T A S

THIS MORTGAGE ("Mortgage") is made as of the 15th day of May, 1990, from BALMORAL RIVER PROPERTIES, an Illinois general partnership ("Baltimore") and LA SALLE NATIONAL TRUST, N.A., not personally but as Trustee ("Trustee") under Trust Agreement dated May 1, 1990, and known as Trust No. 115 532 ("Land Trust") (Baltimore and Trustee collectively known as "Mortgagor") with an address at 135 South La Salle Street, Chicago, Illinois 60603, to BARCLAYS BANK PLC, a banking corporation organized under the laws of England acting through its Chicago branch, a branch of Barclays Bank PLC licensed to do business in the State of Illinois ("Mortgagee"), with an address at 200 West Madison Street, Chicago, Illinois.

P.I.N. : 12-09-200-061

Property Address: 5420 North Pearl Street  
 Rosemont, Cook County, Illinois

(MPAC WEST - PHASE II)

MORTGAGE

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TOGETHER with all of Mortgagor's right, title and interest in and to: (a) all improvements, tenements,

described, is hereinafter referred to as the "premises." State of Illinois which, with the property hereinafter therein, situate, lying and being in the County of Cook and the hereof and all of its estate, right, title and interest ("Real Estate") described in Exhibit A attached hereto and made a part Mortgage, its successors and assigns, the real estate ("Real Mortgage, GRANT, REMISE, RELEASE, ALIEN AND CONVEY unto these presents, the indebtedness evidenced by the Note, Mortgagor does, by other document or instrument evidencing, securing or relating and obligations under this Mortgage, the Loan Agreement or any Loan Agreement, also to secure the performance by Trustee and Balmoral of all of their respective other covenants, agreements and future owed by Mortgagor and/or Balmoral to Mortgagee under the evidenced by the Note and all other debt presently or in the (such recitals being incorporated herein and made a part hereof by this reference), and (y) to secure the indebtedness (i) the making of the Loan by Mortgagee, (ii) other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and (iii) the recitals set forth above (NOW, THEREFORE, (x) for and in consideration of:

A G R E E M E N T S :

to Mortgagee dated February 1, 1990. is made in replacement of that certain Mortgage from Mortgagor and delivery of this Mortgage by the Mortgagor. This Mortgage Loan Agreement with a portion thereof, requires the execution Loan (and retaining the Wenduagel Disbursement (as defined in Mortgagee, as a condition precedent to making the

balance thereof due on May 15, 1992. \$4,200,000, with the final payment of the entire principal order of Mortgagee in the original principal amount of Promissory Note of even date herewith ("Note") payable to the Loan, Mortgagor has executed and delivered to Mortgagee a E. To evidence Mortgagor's obligation to repay the

D. Trustee holds fee simple title to the Real Estate (defined below) and Balmoral is the sole beneficiary of the Land Trust.

C. Mortgagor and Mortgagee have entered into a Loan Agreement of even date herewith ("Loan Agreement"), pursuant to which Mortgagee made a loan to Balmoral in the original principal amount of \$4,200,000 ("Loan").

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All of the land, estate and property hereinabove described, real, personal and mixed, whether annexed or not, and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the real estate mortgaged hereby and to be appropriated to the use of the real estate, and shall, for the purposes of this Mortgage, be deemed to be real estate and conveyed and mortgaged hereby, as to any of the property aforesaid which (notwithstanding the aforesaid declaration and agreement) does not so form a part and parcel of said real estate, this Mortgage is hereby deemed to be, as well, a Security Agreement under the Illinois Uniform Commercial Code in effect or as amended from time to time or under similar or replacement statutes hereafter enacted (collectively, the "UCC") for the purpose of creating hereby a security interest

TOGETHER with all estates, interests, rights, titles, claims or demands which Mortgagor now has or may hereinafter acquire in the Premises, including but not limited to claims or demands with respect to the proceeds of insurance in effect with respect thereto, as more specifically set forth in this Mortgage, and any and all awards made for the taking by eminent domain, or by any proceedings or purchase in lieu thereof, as more specifically set forth in this Mortgage.

Property").  
clause (c) being sometimes collectively called the "Personal Items of Property not specifically mentioned (the items in this of property shall in no way result in or be held to exclude any being understood that the enumeration of any specific articles therein or thereon whether now held or hereafter acquired -- it doors and windows, stoves and ranges, curtain fixtures, shades, awnings, venetian blinds, screens, screen doors, storm fixtures now or hereafter located upon said Premises, all connection with the operation of the Premises and all related furniture, furnishings, and articles used or useful in and ventilation, all other fixtures, apparatus, equipment, refrigeration (whether single units or centrally controlled), light, power, sanitation, sprinkler protection, waste removal, to supply heat, gas, air cooling, air conditioning, water, equipment or articles now or hereafter therein or thereon used estate and not secondarily), and (c) all fixtures, apparatus, (which are pledged primarily and on a parity with said real estate and during all such times as Mortgagor may be entitled thereto and all rents, issues and profits thereof for so long leases, lettings, agreements for use and occupancy, concessions and licenses of or with respect to any or all of the Real Estate, and all rents, issues and profits thereof for so long easements, fixtures, and appurtenances thereto pertaining or belonging whether now held or hereafter acquired, (b) all

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(d) any renewals, extensions, amendments or modifications hereto or of the Loan Documents.

(c) the performance by Mortgagor of all other covenants, agreements and obligations on its part contained in the Loan Documents; and

(b) all other sums advanced pursuant to the provisions of the Credit Agreements, the Loan Agreement, this mortgage, any other mortgage securing the Note, the Note, and any other documents evidencing or securing the Note (collectively, the "Loan Documents");

(a) payment of the Loan, the aggregate principal amount of which shall not exceed FOUR MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$4,200,000), plus all interest accruing thereon, and fees due and payable in connection therewith, and all other amounts due hereunder and otherwise secured hereby under law;

1. This mortgage is to secure:

Obligations Secured

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

TO HAVE AND TO HOLD the Premises unto the said Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth.

Mortgagor covenants (i) that it is lawfully seized of the Premises, (ii) that the same are unencumbered, except for the liens, encumbrances, conditions, restrictions, easements, leases, and other matters, rights or interests disclosed in Schedule B (or the equivalent section or portion) of the ALTA Loan Policy delivered to and accepted by Mortgagee contemporaneously with the execution and delivery of this mortgage (herein called "Permitted Encumbrances"), and (iii) that Mortgagor has good right, full power and lawful authority to convey and mortgage the same; and further, Mortgagor shall forever defend the Premises and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

in such property, which Mortgagor hereby grants to Mortgagee as secured Party (as said term is defined in the UCC), securing said indebtedness and obligations described in this mortgage, and Mortgagee shall have in addition to its rights and remedies hereunder all rights and remedies of a Secured Party under the UCC. As to above personal property which the UCC classifies as fixtures, this instrument shall constitute a fixture filing and financing statement under the UCC.

The foregoing items set forth in subsections (a) through (d) of Section 1 of this Mortgage are hereinafter collectively called the "Obligations."

Maintenance, Repair and Restoration of Improvements, Payment of Liens, Etc.

2. (a) Mortgagor shall (i) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (ii) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien of any kind or nature whatsoever except Permitted Encumbrances (collectively, "Liens"); (iii) pay when due any indebtedness which may be secured by a mortgage on the Premises, whether senior or junior to this Mortgage and whether permitted by the terms hereof or otherwise, and comply with all requirements of all loan documents evidencing or securing such indebtedness, and upon request, exhibit satisfactory evidence of the discharge of any such mortgage to Mortgagee; (iv) complete within a reasonable time any building or buildings or any improvements at any time in the process of erection upon the Premises; (v) comply with all requirements of law, municipal ordinances, or restrictions of record with respect to the Premises and the use thereof, the noncompliance with which would materially impair the use, occupancy or value of the Premises; provided, however, that Sections 3(a) and 3(b) hereinbelow shall govern with respect to Mortgagor's obligation under law to pay taxes, assessments and other charges on the Premises; (vi) make no material alterations in the Premises, except as required by law or municipal ordinance or in furtherance of the development of the Premises in accordance with the uses permitted under the terms of this Mortgage; (vii) suffer or permit no change in the general nature of the occupancy or use of the Premises; provided, however, that Mortgagor or Balmoral shall have the right to close all or a portion of the existing improvements at the Premises, discontinue all business activities at the Real Estate or said portion which has been closed and bar all entry to the Premises or said portion which has been closed (the foregoing being herein collectively called a "Closing"), so long as all other covenants and agreements of Mortgagor under this Mortgage are fully complied with and so long as Mortgagor gives Mortgagee prior notice of a Closing; (viii) initiate or acquiesce in no zoning variation or reclassification without Mortgagee's prior written consent; provided, however, that Mortgagor or Balmoral shall have the right to apply for and obtain those zoning changes for the Real Estate which are necessary, in Mortgagee's judgment, to allow use of the Real Estate for office, retail, movie theatre, hotel and/or civic center purposes and also

purposes incidental to any of such uses, so long as Mortgagor gives Mortgagee prior notice of its application for such zoning change, advises Mortgagee of the progress of its application and notifies Mortgagee of the granting of any zoning change; and (ix) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof, and pay, perform, satisfy and discharge each of the Obligations when required to do so under the terms of this Mortgage, the Note, the Loan Agreement and all other Loan Documents.

(b) Anything in Section 2(a)(ii) and 2(a)(iii) of this Mortgage to the contrary notwithstanding, Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any Lien, and defer payment and discharge thereof during the pendency of such contest; provided: (i) that such contest shall have the effect of preventing the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such Lien; (ii) that, within ten (10) days after Mortgagor has first learned of the assertion of such Lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such Lien; (iii) that such contest shall not have a materially adverse consequence on Mortgagor's financial condition, in Mortgagee's sole reasonable opinion; and (iv) that Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, a sum of money which shall be sufficient in the judgment of Mortgagee to pay in full such Lien and all interest which might become due thereon, and Mortgagor shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional interest whenever, in the judgment of Mortgagee, such increase is advisable. If Mortgagor shall: (x) fail to prosecute such contest with reasonable diligence, or (y) fail to maintain sufficient funds on deposit as hereinabove provided, then Mortgagee may, at its option, apply the money so deposited in payment of or on account of such Lien, or that part thereof then unpaid, together with all interest thereon. If the amount of money so deposited shall be insufficient for the payment in full of such Lien, together with all interest thereon, Mortgagor shall forthwith, upon demand, deposit with Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such Lien or that part thereof then unpaid, together with all interest thereon (provided Mortgagor is not then in default hereunder) when so requested in writing by Mortgagor and when furnished by Mortgagor with sufficient funds to make such payment in full and with evidence satisfactory to Mortgagee of the amount of payment to be made. In lieu of the cash deposit described above, Mortgagor may deliver to

Mortgagee either an amendment to or endorsement of the ALTA Loan Policy provided to Mortgagee at the time this Mortgage is executed or a payment bond from a bonding company satisfactory to Mortgagee; provided that such amendment, endorsement or bond shall insure over, or indemnify Mortgagee against, the Lien which Mortgagor is contesting as aforesaid, and shall otherwise be in form and substance satisfactory to Mortgagee.

(c) Notwithstanding Sections 2(a)(i), 2(a)(iv), 2(a)(v) or 2(a)(vi) hereinabove and the portions of Sections 5 and 20 hereinbelow relating to repair and restoration of the Premises, Mortgagor and Balmoral shall have the right, in lieu of complying with the requirements of said sections or portions of said sections, to effect a Closing and also, at Mortgagor's or Balmoral's election, to demolish and/or remove all of the improvements, fixtures and Personal Property on the Real Estate (the foregoing being herein collectively called a "Demolition"); provided, however, that the following requirements are fully complied with, as applicable:

(i) Mortgagor shall give Mortgagee prior notice of any Closing or Demolition;

(ii) if there is a Closing but no Demolition, the Premises shall not be in such physical condition as to constitute a danger to public health or safety, in Mortgagee's sole judgment, nor shall any of the improvements on the Real Estate be in imminent danger of collapse, in Mortgagee's sole judgment;

(iii) the occurrence of a Closing or Demolition shall not constitute a default or event of default under any lease which may be in effect with respect to the Premises;

(iv) all permits and permissions necessary for any Demolition shall have been issued and shall be in force at all times;

(v) any and all proceeds and moneys received by Mortgagor or Beneficiary in connection with a Demolition shall be paid to Mortgagee to be applied to the repayment of the Obligations;

(vi) Mortgagor shall make any and all repairs, replacements and alterations which are necessary, in Mortgagee's judgment, to effect a Closing, including those required under applicable law or municipal ordinances; and

(vii) no Mortgage Default shall have occurred and be continuing.

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(d) If any proceedings to enforce any law, municipal ordinance or restriction of record, whether judicial or administrative, ("Proceedings") have been instituted and are pending against the Premises or Mortgagor, Balmoral, Mortgagee or any other person occupying any of the Premises, because of any noncompliance with Sections 2(a)(i), 2(a)(iv), 2(a)(v) or 2(a)(vi) hereinabove, or Sections 5 or 20 hereinbelow, then in any such event within 30 days after the same are imposed, issued or entered, Mortgagor shall pay or cause to be paid any and all fines and other penalties which may be imposed, shall fully comply with any and all injunctions which may be issued, and shall fully satisfy and discharge any and all judgments and decrees which may be entered, in any Proceedings against or adverse to the Premises or Mortgagor, Balmoral, Mortgagee or any other person occupying any portion of the Premises (or, alternatively, Mortgagor shall cause the imposition of fines or other penalties, or the injunction, order or decree to be stayed, dismissed or discharged within said 30 day period). Further, no Proceedings shall continue for longer than 4 months after commencement without the same being dismissed or stayed; and Mortgagor shall give Mortgagee prompt notice of the commencement of any Proceedings. The imposition of any fine or other penalty, the issuance of any injunction or entry of any judgment or decree against or adverse to Mortgagor, Beneficiary, Mortgagee or any other person occupying any portion of the Premises in any Proceedings which is not fully paid for or complied with or stayed, dismissed or discharged within 30 days after imposition, and the failure to dismiss or stay any Proceedings within 4 months after commencement shall, in each case, constitute a "Mortgage Default" for purposes of this Mortgage. Mortgagor shall indemnify, defend and hold harmless Mortgagee and its officers, directors, employees, agents and representatives, and their respective successors and assigns, against any and all loss, costs, damage and expense (including but not limited to attorneys' fees and expenses), incurred by any of them by reason of a Closing or Demolition or the commencement of any Proceedings or otherwise by reason of Mortgagor's or Balmoral's noncompliance with the provisions of Sections 2(a)(i), 2(a)(iv), 2(a)(v) or 2(a)(vi) hereinabove, or Sections 5 or 20 hereinbelow, as permitted under Section 2(c) hereinabove.

## Payment of Taxes

3. (a) Mortgagor shall pay or cause to be paid, before the due date thereof, all general real estate taxes, special taxes, special assessments, water charges, sewer service charges, and other charges against the Premises, and shall, upon written request, promptly furnish to Mortgagee duplicate receipts evidencing such payment.

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(b) Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any such taxes or assessments provided: (i) that such contest shall have the effect of preventing the collection of the tax or assessment so contested and the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy the same; (ii) that such contest shall not have a materially adverse effect on Mortgagor's financial condition, in Mortgagee's sole reasonable opinion; and (iii) that Mortgagor shall deposit with Mortgagee a sum of money deemed adequate by Mortgagee to pay such taxes and any penalty and interest thereon, increasing such deposit, as Mortgagee may from time to time require in its sole judgment. Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such taxes or that part thereof then unpaid, together with all interest thereon (provided Mortgagor is not then in default hereunder) when so requested in writing by Mortgagor and when furnished by Mortgagor with sufficient funds to make such payment in full and with evidence satisfactory to Mortgagee of the amount of payment to be made. In lieu of the cash deposit described above, Mortgagor may deliver to Mortgagee either an amendment to or endorsement of the ALTA Loan Policy provided to Mortgagee at the time this Mortgage is executed or a payment bond from a bonding company satisfactory to Mortgagee; provided that such amendment, endorsement or bond shall insure over, or indemnify Mortgagee against, the taxes which Mortgagor is contesting as aforesaid, and shall otherwise be in form and substance satisfactory to Mortgagee.

## Insurance

4. Mortgagor shall provide liability insurance in the minimum amount of \$5,000,000, combined limit for personal injury and death and property damage, naming Mortgagee as an additional insured party by specific endorsement. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Mortgagee, with mortgagee clauses attached to all policies in favor of and in form satisfactory to Mortgagee naming Mortgagee as loss payee, and all policies shall include a provision requiring that the coverage evidenced thereby shall not be terminated or modified without thirty (30) days prior written notice to Mortgagee. Mortgagor shall deliver copies of all policies and duplicate original certificates evidencing such insurance, including copies of additional and renewal policies and duplicate original certificates, together with evidence of full payment of premiums thereon, to Mortgagee, and, in the case of insurance about to expire, shall deliver duplicate original certificates and copies of each renewal policy, together with evidence of full payment of premiums thereon, not less than

thirty (30) days prior to their respective dates of expiration. Mortgagor will not permit any condition to exist at the Premises which would wholly or partially invalidate any insurance thereon. Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a mortgagee clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the policy or policies of such insurance.

## Action Required if Fire or Other Casualty and Application of Proceeds of Insurance

5. In case of fire or other casualty, Mortgagee (or after entry of decree of foreclosure, purchaser at the sale, or the decree creditor, as the case may be) shall have the sole right and discretion to (i) settle and adjust any claim under such insurance policies or (ii) allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss. In either case, Mortgagee is authorized to collect and receipt for any such insurance proceeds. In the case of loss where the cost of rebuilding or restoration is estimated by Mortgagee in its judgment to be \$100,000 or less, such insurance proceeds shall, at Mortgagor's option, either: (a) be applied first to the reasonable expenses of effecting a Closing and/or Demolition, as the case may be (if Mortgagor elects to effect a Closing and/or Demolition in compliance with Section 2(c) above, Mortgagor in fact complies with the provisions and requirements of said Section 2(c), and Mortgagor also gives Mortgagee prior notice of Mortgagor's intention to effect a Closing and/or Demolition), and then in payment, reduction or satisfaction of one or more of the Obligations, whether due or not, in such order as Mortgagee may elect, or (b) be held by Mortgagee and used to reimburse Mortgagor for the cost of rebuilding or restoration of the buildings or improvements on the Premises. In the case of a loss where the cost of rebuilding or restoration is estimated by Mortgagee in its judgment to be more than \$100,000, such insurance proceeds shall at Mortgagee's option, either: (x) applied in payment, reduction or satisfaction of one or more of the Obligations, whether due or not, in such order as Mortgagee may elect, or (y) held by Mortgagee and used to reimburse Mortgagor for the cost of the rebuilding or restoration of buildings or improvements on the Premises; provided, however, that Mortgagee may not elect option "(y)" above if Mortgagor elects to effect a Closing and/or a Demolition in compliance with Section 2(c) hereinabove, Mortgagor in fact complies with the provisions and requirements of said Section 2(c), and Mortgagor also gives

Mortgagee prior notice of its intention to do so, and if Mortgagor makes such election, Mortgagee shall retain all insurance proceeds and apply the same first to the reasonable expenses of effecting a Closing and/or Demolition, as the case may be, and then to the Obligations as aforesaid. If under the provisions of this Section 5 such proceeds are to be used to restore or rebuild the Premises, Mortgagor shall promptly and expeditiously rebuild or restore the buildings and improvements to the equivalent of their condition immediately prior to the loss and in accordance with the original plans and specifications or to such other condition as Mortgagee shall approve in writing. If the proceeds are to be used to reimburse Mortgagor for the cost of rebuilding or restoration, such proceeds shall be made available, from time to time, upon Mortgagee's being furnished with satisfactory evidence of the estimated cost of completion thereof and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as Mortgagee may require and approve. Mortgagee shall also be furnished with all plans and specifications for such rebuilding or restoration as the Mortgagee may require and approve. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed, from time to time, and at all times the undisbursed balance of said proceeds remaining in Mortgagee's possession shall be at least sufficient to pay for the cost of completion of the work free and clear of liens.

In case of loss after a foreclosure by judicial proceeding has been instituted, the proceeds of any such insurance policy or policies, if not applied as aforesaid in rebuilding or restoring the buildings or improvements, shall be applied in payment or reduction of the Obligations or in payment or reduction of the amount due in accordance with any order of foreclosure that may be entered in any such proceeding, and the balance, if any, shall be paid to the owner of the equity of redemption if it shall then be entitled to the same or as the court may direct. In case of the foreclosure of this Mortgage by judicial proceeding, the court in its order and upon notice to the insurer may provide that the mortgagee's clause attached to each of said insurance policies may be cancelled and that the purchaser at the foreclosure sale held in accordance with such judicial proceeding may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said purchaser; and any such foreclosure order may further provide that in case of one or more redemptions under said order, pursuant to the statute in such case made and provided, then, and in every such case, each successive redeemer may cause the preceding loss clause attached to each insurance policy to be cancelled and a new

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loss clause to be attached thereto, making the loss thereunder payable to such redepton. In the event of such foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

## Stamp Tax

6. If, by the laws of the United States of America, or of any state having jurisdiction over Mortgagor, any stamp tax or similar tax is due or becomes due in respect of any of the Obligations or the recording of this Mortgage, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to hold harmless and agrees to indemnify Mortgagee, its successors or assigns, against any liability incurred by reason of the imposition of any stamp tax or similar tax on the issuance of the Obligations or the recording of this Mortgage.

## Prepayment Privilege

7. Mortgagor shall have the privilege of making prepayments on the principal of the Obligations (in addition to the required payments) in accordance with the terms and conditions set forth in the Loan Agreement or the Note as they may be applicable to the respective Obligations in question.

## Effect of Extensions of Time

8. If the payment of any of the Obligations or any part thereof is extended or varied or if any part of the security is released, all persons or entities now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

## Effect of Changes in Laws Regarding Taxation

9. In the event of the enactment after this date of any law of the state in which the Premises are located deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by

mortgages or the mortgagee's interest in the property, or the manner of collection of taxes so as to affect this Mortgage or the indebtedness secured hereby, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (a) it shall be unlawful to require Mortgagor to make such payment, or (b) the making of such payment shall result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the Obligations to be and become due and payable sixty (60) days from the giving of such notice

## Mortgagee's Performance of Defaulted Acts; Subrogation

10. In case of default on the part of Mortgagor under this Mortgage and the failure of Mortgagor to cure such default within the applicable cure period, if any, Mortgagee shall have the right, but not the obligation, to make any payment or perform any act herein or in or with respect to any of the Obligations required of Mortgagor, in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien on title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment. Anything to the contrary notwithstanding, Mortgagee may immediately take action to cure any default in the payment of taxes or insurance premiums or any other defaults that create an emergency regarding the priority or validity of the lien of this Mortgage or the physical condition of the Premises without regard to the Mortgagor's cure rights, if any. Mortgagee shall use its best efforts to give Mortgagor notice of its making any payment or performing any act described in the first or second sentence of this Section 10 (which notice, however, shall be given within a reasonable time after Mortgagee takes action as described in the second sentence of this Section 10), provided, however, that Mortgagee's failure to give said notice in accordance with the foregoing shall not subject Mortgagee to any legal liability nor impair or affect any of Mortgagee's rights or remedies under this Mortgage, the Loan Agreement, the Note or any of the other Loan Documents. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including but not limited to attorneys' fees and expenses, and any other moneys advanced by Mortgagee to protect the Premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with

interest thereon at the Default Rate as hereinafter defined in Section 26 below. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor under this Mortgage. Should the proceeds of the Obligations or any part thereof, or any amount paid out or advanced hereunder by Mortgagee, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof on a parity with or prior or superior to the lien hereof, then as additional security hereunder, the Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

### Mortgagee's Reliance on Tax Bills, Etc.

11. Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any Lien, may do so without inquiry as to the validity or amount of such Lien or any claim for Lien which may be asserted.

### Default

12. The following shall be a default ("Mortgage Default") hereunder: if (a) any payment of principal or interest due under or with respect to any of the Obligations, or any other payment due in accordance with the terms of this Mortgage, is not paid within five (5) days after the same is due and payable; or (b) any other of the covenants, agreements or conditions, hereinbefore or hereinafter contained, required to be kept or performed or observed by Mortgagor in this Mortgage, are not observed or performed, such nonperformance or non-observance does not constitute a Mortgage Default under any other provision of this Mortgage and such nonperformance or non-observance is not remedied by Mortgagor within thirty (30) days after notice from Mortgagee to Mortgagor; provided, however, that in the case of any such nonperformance or non-observance which cannot, in Mortgagee's sole judgment, be fully cured within said thirty (30) day period, Mortgagor shall have such additional time as is reasonably necessary to complete such cure, so long as Mortgagor (x) commences to cure

such default promptly after said notice from Mortgagee to Mortgagor, (y) diligently prosecutes such cure to completion, and (z) in any event, without limiting the requirements of clause (x) or (y) hereof, completes such cure within ninety (90) days after said notice from Mortgagee to Mortgagor; or (c) any representation made by Mortgagor contained in this Mortgage shall be false as of the date when made in any material respect; or (d) any breach of any representations, agreements, terms or conditions contained in, or the occurrence of a default or event of default under, the Loan Agreement or the Credit Agreements or any document or instrument securing the Credit Facilities and such default or breach shall not have been cured within the applicable grace period provided therefor, if any ("Loan Agreement Default"); or (e) any default or event of default not otherwise described in this Section 12, shall have occurred under or with respect to any of the Obligations, or under or with respect to any of the Loan Documents, and such default shall not have been cured within the applicable grace period provided therefor, if any; or (f) Mortgagor or Balmoral or Guarantors (as defined in the Loan Agreement) shall file a petition in voluntary bankruptcy or insolvency or under any provision of the Federal Bankruptcy Act or any similar law, state or Federal, whether now or hereafter existing, or an answer admitting insolvency or inability to pay its debts, or fail to obtain a vacation or stay of involuntary proceedings within sixty (60) days, as hereinafter provided; or (g) Mortgagor or Balmoral or Guarantors shall be adjudicated a bankrupt, or a trustee or a receiver shall be appointed for the Mortgagor or Balmoral or Guarantors or for all of the property of Mortgagor or Balmoral or Guarantors or the major part thereof in any involuntary proceeding; or any court shall have taken jurisdiction of the property of the Mortgagor or Balmoral or Guarantors or the major part thereof in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of the Mortgagor or Balmoral or Guarantors, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within sixty (60) days; or (h) Mortgagor or Balmoral or Guarantors shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all of its property or the major part thereof. All cure periods under this Section 12 shall run concurrently with any cure period allowed with respect to any default under the Loan Agreement, the Note or any of the other Loan Documents.

## Foreclosure; Expense of Litigation

13. When either (i) the indebtedness secured hereby or any part thereof shall become due, whether by lapse of time or otherwise, or (ii) a Mortgage Default shall have occurred (whether listed in Section 12 hereof or described elsewhere in this Mortgage), Mortgagee shall have the right to accelerate the maturity of all of the Obligations and to foreclose the lien hereof by judicial action. In any suit to foreclose the lien hereof or in any other action to enforce any other remedy of Mortgagee under this Mortgage or with respect to any of the other Obligations, there shall be allowed and included as additional indebtedness in the decree for sale, judgment of foreclosure or other judgment or decree all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, paralegals' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title and value as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Section mentioned and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including but not limited to the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Obligations or the Premises, including bankruptcy proceedings, or in the preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate, and shall be secured by this Mortgage.

Upon any sale made under or by virtue of this Section or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Premises or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness of Mortgagor secured by this Mortgage the sale price, after deducting therefrom the expenses of the sale and the cost of the action and any other sums which Mortgagor is required to pay or that Mortgagee is authorized to deduct under this Mortgage.

Mortgagor understands and agrees that in the event of a Mortgage Default, Mortgagee, to the extent this Mortgage

constitutes a security agreement under the UCC, may exercise any and all rights and remedies of a Secured Party under the UCC including but not limited to the taking possession of any personal property covered by this Mortgage and disposing of the same by sale or otherwise; provided that at least fifteen (15) days prior notice of such disposition must be given to the Mortgagor, all as provided for by the UCC, it being agreed that such fifteen (15) days' notice shall constitute fair and reasonable notice to Mortgagor of such disposition.

### Application of Proceeds of Foreclosure Sale

14. The proceeds of any foreclosure sale of the Premises (or the sale of property under the last unnumbered paragraph of Section 13 hereof) shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings (or sale, as the case may be), including all such items as are mentioned in the preceding Section hereof; second, to the repayment of the Obligations and all other items which under the terms hereof constitute secured indebtedness additional to that constituting the Obligations, with interest thereon as herein provided; and third, any overplus to Mortgagor, its successors or assigns, as their rights may appear.

### Appointment of Receiver

15. Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice if permitted by law, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises, and Mortgagee hereunder may be appointed as such receiver. Such receiver shall have power: (a) to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (b) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renewal terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be

contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from any judgment or decree of foreclosure, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; and (c) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part to: (x) the Obligations or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to any foreclosure sale; and (y) the deficiency in case of a sale and deficiency.

#### Assignment of Rents and Leases

16. To further secure the Obligations, Mortgagor hereby sells, assigns and transfers unto Mortgagee all leases, lettings and agreements for use and occupancy, concessions and licenses for or with respect to the Premises, and all the rents, issues and profits now due and which may hereafter become due (whether before or after foreclosure or during the period of redemption) under or by virtue of, and to the extent payable pursuant to, any lease, whether written or verbal, or any letting of, or of any agreement for, the use or occupancy of the Premises or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all such leases, lettings and agreements and all the avails thereunder to Mortgagee. Mortgagor hereby irrevocably appoints Mortgagee its true and lawful attorney in its name and stead (with or without taking possession of the Premises as provided in Section 17 hereof) to rent, lease or let all or any portion of the Premises to any party or parties at such rental and upon such terms as Mortgagee shall, in its discretion, determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due or that may hereafter become due under each and every of the leases, lettings and agreements, written or verbal, or other tenancy existing, or which may hereafter exist on the Premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Mortgagee would have upon taking possession pursuant to the provisions of Section 17 hereof.

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Mortgagor agrees that no rent will hereafter be paid by any person in possession of any portion of the Premises for more than one installment in advance, and Mortgagor further agrees that the payment of the rents to accrue for any portion of the Premises will not be waived, released, reduced, discounted or otherwise discharged or compromised by Mortgagor for any period of time after the occurrence of a Mortgage Default. Mortgagor agrees that hereafter it will not assign any of the rents or profits of the Premises, except to a purchaser or grantee of the Premises. Mortgagor agrees not to amend or modify any lease or leases in any material respect without the prior written consent of Mortgagee. Mortgagor agrees that any extension or agreement to extend the term of any lease or leases shall constitute a material amendment or modification requiring Mortgagee's consent under the immediately preceding sentence hereof.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession of the Premises in the absence of the taking of actual control of the Premises by Mortgagee pursuant to Section 17 hereof. In the exercise of the powers herein granted Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor.

Mortgagor further agrees to assign and transfer to Mortgagee all future leases upon all or any part of the Premises and to execute and deliver, at the request of Mortgagee, all such further assurances and assignments in the Premises as Mortgagee shall from time to time require.

Although it is the intention of the parties that the assignment contained in this Section 15 shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Mortgagee shall not exercise any of the rights or powers conferred upon it by this Section until a Mortgage Default occurs and Mortgagor shall retain such rights and powers until such time. The rights of Mortgagee under this Section 16 shall continue and remain in full force and effect both before and after commencement of any action or proceeding to foreclose this Mortgage, after the foreclosure sale in connection with the foreclosure of this Mortgage, and until expiration of the period of redemption from any such foreclosure sale, whether or not any deficiency from the unpaid balance of the indebtedness secured hereby exists after such foreclosure sale.

Mortgagor covenants and agrees that if Mortgagor, as lessor therein, shall fail to perform and fulfill any material term, covenant, condition or provision in any lease or leases

entered into by Mortgagor or Balmoral or to which the Premises is subject, on its part to be performed or fulfilled, at the times and in the manner in such lease or leases provided, or if Mortgagor shall suffer or permit to occur any material breach or default under the provisions of any such lease or leases, then, and in any such event, such material breach or default shall, if uncured for ten (10) days after notice thereof from Mortgagee, constitute a Mortgage Default.

**Mortgagee's Right of Possession in Case of Default**

17 In any case in which under the provisions of this Mortgage, Mortgagee has a right to foreclose the lien hereof, Mortgagor shall, forthwith, upon demand by Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of, the Premises or any part thereof personally or by its agent or attorneys. In such event, Mortgagee in its discretion may in accordance with law, enter upon and take and maintain possession of all or any part of the Premises together with all documents, books, records, papers and accruals of Mortgagor or the then owner of the Premises relating thereto and may exclude Mortgagor its agents or servants wholly therefrom and may, as attorney in fact, as agent for Mortgagor or in its own name as Mortgagee, and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power: (a) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof; (c) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or

issuance of any certificate of sale or deed to any purchaser; (d) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises as to it may seem judicious; (e) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and (f) to receive all of such avails, rents, issues and profits; Mortgagor hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor.

Mortgagor shall be deemed to have constituted and appointed Mortgagee its true and lawful attorney-in-fact with full power of substitution either in the name of Mortgagee or in the name of Mortgagor, to exercise any of the powers granted to Mortgagee pursuant to this Section 17. Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage (except for any such liability, loss or damage which may be caused by the willful misconduct or gross negligence of Mortgagee) which Mortgagee may or might incur by reason of its performance of any action authorized under this Section 17 and of and from any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements of Mortgagor.

#### Application of Income Received by Mortgagee

18. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it by Section 16 and Section 17 hereof, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as Mortgagee may determine:

(a) to the payment of the operating expenses of the Premises, including but not limited to the cost of the management thereof, established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises;

(c) to the payment of all repairs, renewals, replacements, alterations, additions, betterments, and improvements to the Premises necessary in the management and maintenance of the Premises;

(d) to the payment of any loss, costs, damage or expenses (including but not limited to attorney's fees and expenses) incurred by Mortgagee, its officers, directors, employees, agents and representatives and their respective successors or assigns in connection with any Proceedings;

(e) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

## Mortgagee's Right of Inspection

19. Mortgagee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

## Condemnation

20. Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any award or any claim for damages for any of the Premises (or any interest therein) taken or damaged by the power of eminent domain or by condemnation. Mortgagee shall be entitled (but shall not be obligated) to participate in the collection of such proceeds and any such proceeds shall be first applied to reimburse Mortgagee for all costs and expenses, including but not limited to attorney's fees and expenses, incurred in connection with the collection of such proceeds. Mortgagee may (i) retain the remainder of such award in payment or reduction of the indebtedness secured hereby in such order as Mortgagee shall determine, whether due or not, or (ii) hold the proceeds of such award and permit the same to be used to reimburse Mortgagor for the cost of the rebuilding or restoration of buildings or improvements on the Premises, in accordance with plans and specifications to be submitted to and approved by Mortgagee; provided, however, that Mortgagee may not elect the option under clause (ii) of this Section 20 if Mortgagor elects to comply (and in fact complies) with Section 2(c) hereof (and so notifies Mortgagee of its intention to do so), and if Mortgagor makes such election, Mortgagee shall retain the remainder of such award and apply the same first to the reasonable expenses of effecting a Closing and/or Demolition, as the case may be, and then to the Obligations as aforesaid. If the proceeds are to be used to reimburse Mortgagor for rebuilding or restoration, the proceeds of the award shall be paid out in the same manner as is

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provided in Section 5 hereof for the payment of insurance proceeds toward the cost of rebuilding or restoration. If the amount of such award is insufficient to cover the cost of rebuilding or restoration, Mortgagor shall pay such cost in excess of the amount of the award before it receives any reimbursement out of the award. Any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall, at the option of Mortgagee, be applied on account of the indebtedness secured hereby or be paid to any other party entitled thereto.

## Release upon Payment and Discharge of Mortgagor's Obligations

21. If Mortgagor shall fully pay all principal and interest on the indebtedness secured hereby and fully comply with, satisfy and discharge all of the other terms and provisions hereof and all other Obligations to be paid, performed and complied with by Mortgagor, then Mortgagee shall execute and deliver to Mortgagor a release of this Mortgage in recordable form.

## Giving of Notice

22. Any notice which either party hereto may desire or be required to give to the other party shall be in writing and shall be given as provided in the Loan Agreement, or at such other address and place as any party hereto may by notice in writing designate to the others as the addressee or place for service of notice.

## Waiver of Defense; Remedies Not Exclusive; Time is of the Essence.

23. No action for the enforcement of the lien hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Obligations. Mortgagee shall be entitled to enforce payment and performance of any indebtedness secured hereby and to exercise all rights and powers under this Mortgage or under or with respect to any other Obligations or any laws now or hereafter in force, notwithstanding that some or all of the said indebtedness secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and

any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given hereby to Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time, and as often as it may be deemed expedient by Mortgagee and Mortgagee may pursue inconsistent remedies. No waiver of any Mortgage Default shall be implied from any omission by the Mortgagee to take any action on account of such default if such default persists or be repeated, and no express waiver shall affect any such default other than the default specified in the express waiver and that only for the time and to the extent therein stated. No acceptance of any payment of any one or more delinquent installments which does not include interest at the Default Rate from the date of delinquency, together with any required late charge, shall constitute a waiver of the right of Mortgagee at any time thereafter to demand and collect payment of interest at such Default Rate or of late charges, if any. Time is of the essence of this Mortgage and each of the covenants and provisions hereof.

#### Waiver of Statutory Rights

24. To the fullest extent permitted under applicable law, Mortgagor shall not and will not apply for or avail itself of any homestead, appraisalment, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Mortgagor hereby waives and any all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on its behalf and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage. The foregoing waiver of the right of redemption is made pursuant to Ill. Rev. Stat. Ch. 110, § 15-1601(b).

#### Representations of Mortgagor

25. To induce Mortgagee to make the Loan available to Mortgagor in accordance with the terms of the Loan Agreement and to disburse the proceeds of the indebtedness secured by this Mortgage, Mortgagor hereby represents to Mortgagee as follows:

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(a) that as of the date hereof and thereafter, Mortgagor has good and marketable fee simple title to the Premises, subject only to the Permitted Encumbrances;

(b) that to the best of Mortgagor's and Balmoral's knowledge (without inquiry): (i) the existing use and condition of the Premises do not violate any building, health, fire, water, use, or similar statute, ordinance, law, regulation or code, nor has Mortgagor or Balmoral received notice of any such violation which has not been heretofore corrected, except for such violations as would not, in the aggregate, have a material adverse effect on Mortgagor's or Balmoral's financial condition, operations or business; (ii) that the existing use and condition of the Premises do not violate any zoning statute, ordinance, law, regulation or code, nor has Mortgagor or Balmoral received notice of any such violation which has not been heretofore corrected; (iii) that the Premises are in conformance in all material respects with current zoning requirements, including, without limitation, all parking requirements, and that the Premises are not a nonconforming or special use that would in any way prohibit continued use of the Premises as currently operated; and (iv) the Premises as mortgaged to Mortgagee shall include all rights to all off-site facilities, if any, necessary to ensure compliance with all laws and to afford adequate utility service to the Premises;

(c) that no litigation or proceedings are pending, or to the best of Mortgagor's and Balmoral's knowledge (but without their undertaking any litigation search of the appropriate court records) are threatened, against Mortgagor or Balmoral (i) which will or could affect the validity or priority of the lien of the Mortgage, (ii) which has or will have a material adverse effect on the ability of Mortgagor or Balmoral to perform Mortgagor's obligations pursuant to and as contemplated by the terms and provisions of this Mortgage or to pay, perform, satisfy or discharge the other Obligations, or (iii) which has or will have a material adverse effect on the operation or condition of the Premises or any part thereof;

(d) that the execution, delivery and performance of this Mortgage, the Note, the Loan Agreement and the other Loan Documents and the payment, performance, satisfaction or discharge of the other Obligations have not constituted (and will not, upon the giving of notice or lapse of time or both, constitute) a material breach or default under any other agreement to which Trustee or Balmoral is a party or may be

bound or affected, or a violation of any law or court order which may affect the Premises, any part thereof, any interest therein, or the use thereof;

(e) that Mortgagor and Balmoral have not entered into any leases or other arrangements for occupancy of space within the Premises;

(f) that (i) no condemnation of any portion of the Premises, (ii) no condemnation or relocation of any roadways abutting the Premises, and (iii) no denial of access to the Premises from any point of access to the Premises, has commenced which could have a material adverse effect on the use, occupancy or enjoyment of the Premises; and that to the best of Mortgagor's knowledge, none of the foregoing is contemplated by any governmental authority which could have a material adverse effect on the use, occupancy or enjoyment of the Premises;

(g) that Mortgagor and Balmoral have not received any notice from any insurance company of any defects or inadequacies in the Premises which would materially adversely affect the insurability of the Premises or which would materially increase the cost of insuring the Premises beyond that which is customarily charged for similar property in the vicinity of the Premises used for a similar purpose;

(h) that, to the best of Mortgagor's and Balmoral's knowledge, without inquiry, all consents, licenses and permits and all other authorizations or approvals required to operate the Premises for the purposes which it is granted on of the date hereof have been obtained, and all laws, rules and regulations of the state in which the Premises are located or any subdivision thereof relating to the operation of the Premises have been complied with; and

(i) that, to the best of Mortgagor's and Balmoral's knowledge, without inquiry, the Premises comply in all material respects with all applicable environmental protection or control laws, rules and regulations.

## Default Rate

26. "Default Rate" as used herein shall mean interest at the annual rate equal to the "Floating Rate" (defined in the Note) plus one percent (1%) -- such Default Rate to change when and as the Floating Rate changes -- but in no event higher than the maximum rate, if any, permitted by applicable law.

## Binding on Successors and Assigns

27. This Mortgage and all provisions hereof shall be binding upon Mortgagor and all persons claiming under or through Mortgagor and shall inure to the benefit of Mortgagee and its successors and assigns.

## Definitions of "Mortgagor," and "Mortgagee"

28. The word "Mortgagor" when used herein shall include: (a) the original Mortgagor named in the preambles hereof; (b) said original Mortgagor's successors and assigns; and (c) all owners from time to time of the Premises. The word "Mortgagee" when used herein shall include all successors and assigns of the Mortgagee identified in the preambles hereof.

## Captions

29. The captions and headings of various paragraphs of this Mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

## Business Loan Recital

30. (a) Mortgagor acknowledges and agrees that (i) the proceeds of the loan will be used in conformance with subparagraph (1)(1) of Section 4 of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money," approved May 24, 1987, as amended (Ill. rev. Stat. 1987 ed., ch. 17, sec. 6404(1)(1)); (ii) that the obligations secured hereby constitute a business loan which comes within the purview of said Section 4; and (iii) that the Obligations are exempted transactions under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 et seq.

(b) Mortgagor acknowledges and agrees that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Ill. Rev. Stat. 1987 ed., ch. 110, sec. 15-1201) or residential real estate (as defined in Ill. Rev. Stat. 1987 ed., ch. 110, sec. 15-1219).

## Filing and Recording Fees

31. Mortgagor shall pay all title insurance premiums, escrow charges, filing, registration or recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes,

and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage and the Obligations.

## Execution of Separate Security Agreement, Financing Statements, Etc.

32. Mortgagor, upon request by Mortgagee from time to time, shall execute, acknowledge and deliver to Mortgagee, a Security Agreement, Financing Statement or other similar security instruments, in form reasonably satisfactory to Mortgagee, covering all property of any kind whatsoever which Mortgagor may hereafter acquire, which in the opinion of Mortgagee is essential to the operation of the Premises and which constitutes goods within the meaning of the UCC, and Mortgagor will further execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any financing statement, affidavit, continuation statement or certificate or other document as Mortgagee may reasonably request in order to perfect, preserve, maintain, continue and extend the security interest under and the priority of this Mortgage and such security instrument. Mortgagor further agrees to pay to Mortgagee on demand all costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing and re-filing of any such document.

## Partial Invalidity

33. Mortgagor and Mortgagee intend and believe that each provision in this Mortgage comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage are found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decisions, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that it or they are legal, valid and enforceable, that the remainder of this Mortgage shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this Mortgage shall continue in full force and effect.

Loan Agreement

34. The Loan Agreement and all provisions thereof are incorporated herein by express reference. All advances and indebtedness arising and accruing under the Loan Agreement from time to time shall be secured hereby to the full extent of the amount stated to be secured hereby and according to law, and the occurrence of any Loan Agreement Default (defined in Section 12 hereinabove) shall constitute a Mortgage Default under this Mortgage entitling Mortgagee to all of the rights and remedies conferred upon Mortgagee by the terms of this Mortgage. Except as otherwise specifically provided herein, in the event of any conflict or inconsistency between the terms and provisions of this Mortgage and those of the Loan Agreement or any other Loan Document, the terms and provisions of the Loan Agreement shall in each instance govern and control to the extent of such conflict or inconsistency. A provision of this Mortgage shall not be deemed to be inconsistent with the Loan Agreement because no provision in the Loan Agreement covers such provision in this Mortgage.

Mortgagee's Lien for Service Charge and Expenses

35. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan proceeds disbursed from time to time) the payment of any and all expenses and advances due to or incurred by Mortgagee in connection with the indebtedness to be secured hereby and which are to be reimbursed by Mortgagor under the terms of this Mortgage or the Existing Loan Agreement or the Letter Agreement, as amended, provided, however, that in no event shall the total amount of proceeds of the Loan and the Credit Facilities disbursed plus such additional amounts exceed \$60,000,000.

Maintenance of Mortgagor's Interest

36. So long as any of the Obligations remain unpaid, unperformed, unsatisfied, or undischarged, if Mortgagor shall, without Mortgagee's prior written consent, transfer, convey, assign, alien, lease, pledge, hypothecate or mortgage the Premises or any portion thereof or any interest therein, either voluntarily or involuntarily, or enter into a contract to do any of the foregoing, then, and in any such event, such action or occurrence shall constitute a Mortgage Default. Further, so long as any of the Obligations remain unpaid, unperformed, unsatisfied, or undischarged: (x) if Balmoral shall, without Mortgagee's prior written consent, transfer, convey, assign, alien, lease, pledge, hypothecate or mortgage its beneficial

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interest in Mortgagor or any portion thereof or any interest therein, either voluntarily or involuntarily, or enter into a contract to do any of the foregoing, then, and in any such event, such action or occurrence shall also constitute a Mortgage Default; and (y) if any of the general partners of Balmoral shall, without Mortgagee's prior written consent, transfer, convey, assign, alien, lease, pledge, hypothecate or mortgage his interests in Balmoral or any portion thereof or any interest therein, either voluntarily or involuntarily, or enter into a contract to do any of the foregoing, then, and in any such event, such action or occurrence shall constitute a Mortgage Default. Notwithstanding the immediately preceding sentence, each of the following transfers and transactions shall be permitted without Mortgagee's consent if the applicable conditions and requirements are satisfied and complied with:

(a) The present general partners of Balmoral shall have the right to make transfers of their interests in Balmoral among themselves and shall also have the right to admit additional persons as general partners of Balmoral, so long as in each case the present general partners at all times retain a general partner's interest in Balmoral and also at all times collectively have the sole right to manage and control Balmoral and its business and operations, and so long as each such additional general partner is acceptable to Mortgagee.

(b) The present general partners of Balmoral shall have the right to convert Balmoral into a limited partnership by creating a new limited partnership, by transferring all of Balmoral's rights and interests in and to the Premises to said new limited partnership, and by having said new limited partnership assume all of Balmoral's duties and obligations in any way connected with the Premises (including but not limited to those under the Loan Documents, if any), so long as (i) the present general partners of Balmoral at all times hold and retain a general partner's interest in said new limited partnership and also at all times collectively have the sole right to manage and control said new limited partnership and its business and operations, (ii) any new general partners in said new limited partnership are acceptable to Mortgagee, (iii) all requirements of applicable law for creating and maintaining a limited partnership are fully complied with by said new limited partnership, and (iv) the agreement and certificate of limited partnership are reviewed and approved by Mortgagee (which review and approval shall not be unreasonably withheld or delayed); and upon the completion of the creation, transfer and assumption described hereinabove in this paragraph

(b), all references to Balmoral and Balmoral River Properties contained in this Mortgage and in the Loan Documents shall include said new limited partnership.

(c) The present general partners of Balmoral shall have the right to convert Balmoral into a corporation by creating a new corporation, by transferring all of Balmoral's rights and interests in and to the Premises to said new corporation, and by having said new corporation assume all of Balmoral's duties and obligations in any way connected with the Premises (including but not limited to those under the Loan Documents, if any), so long as (i) the present general partners of Balmoral at all times collectively hold at least 51% of the voting shares of stock of said new corporation, (ii) all requirements of applicable law for creating and maintaining a corporation are fully complied with by said new corporation, and (iii) the articles of incorporation and by-laws of said new corporation are reviewed and approved by Mortgagee (which approval shall not be unreasonably withheld or delayed); and upon the completion of the creation, transfer and assumption described hereinabove in this paragraph (c), all references to Balmoral and Balmoral River Properties contained in this Mortgage and in the Loan Documents shall include said new corporation.

#### Applicable Law

37. This Mortgage and the other Loan Documents shall be construed, interpreted and governed by the laws of the State of Illinois.

#### No Offsets

38. No right of offset or claim that Mortgagor now has or may have in the future against Mortgagee shall relieve Mortgagor from paying any amounts due under or with respect to the Obligations or from performing any other duties contained herein or secured hereby.

#### Future Advances

39. This Mortgage also secures all future advances made or to be made under the Note and Loan Agreement, which future advances shall have the same priority as if all such future advances were made on the date of execution hereof. Nothing in this Section 39 or in any other provision of this Mortgage shall be deemed either (a) an obligation on the part of Mortgagee to make any future advances other than in accordance

with the terms and provisions of the Loan Agreement, or (b) an agreement on the part of Mortgagee to increase the amount of the Loan to any amount in excess of \$31,750,000.

Trustee's Exculpation

40. This Mortgage is executed by LA SALLE NATIONAL TRUST, N.A., not personally, but as Trustee aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said bank hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein or in the Loan Agreement or the Note shall be construed as creating any liability on said Trustee or on said bank personally to pay or any interest that may accrue thereon, its or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained or to indemnify, hold harmless or reimburse Mortgagee for any costs, claims, loss, fines, penalties, damage or expense of any nature, including, without limitation, attorneys' fees, all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as said Trustee and said corporation personally are concerned, the legal holder or holders of the Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the beneficial interest and to the Premises hereby conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in said Note provided, to the guaranties of the Obligations, in whole or in part, and to any and all other security given to secure the payment of the Obligations and each of them.

Clerk's Office



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STATE OF ILLINOIS )  
                          ) SS  
COUNTY OF COOK    )

I, HARRIET DENISEWICZ, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JOSEPH W. LANG, a VICE PRESIDENT of LA SALLE NATIONAL TRUST, N.A., which is the Trustee under the Trust Agreement described under the foregoing instrument, and Rosemary Collins, a SECRETARY Secretary of said Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such VICE PRESIDENT and SECRETARY Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as such officers of said Bank, and affixed the corporate seal of said Bank thereto, as their own free and voluntary act and as the free and voluntary act of the Bank, as Trustee aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 18<sup>th</sup> day of May, 1991.

Harriet Denisewicz  
Notary Public  
My Commission Expires: \_\_\_\_\_



Notary Public Clerk's Office

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## EXHIBIT A

All of Lot 3 (except the North 410 feet thereof, including in this exception the portion lying in Bryn Mawr Avenue, also except that portion of said Lot 3 which lies West of a line 40 feet Easterly of, parallel with and measured at right angles to the Easterly right of way line of the Minneapolis, St. Paul and Saulte Ste. Marie Railroad; also except the East 33 feet thereof) in Frederick Joss' Division of that part of the North 1/2 of the North East 1/4 of Section 9, Township 40 North, Range 12 East of the Third Principal Meridian, Easterly of the right of way of the Minneapolis, St. Paul and Saulte Ste. Marie Railroad, in Cook County, Illinois.

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